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7 EITAN OVADIA ELIAHU,
8 Plaintiff,
9 v.
10 THE STATE OF ISRAEL,
11 Defendant.

12 Case No. [14-cv-01636-BLF](#)

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28 **ORDER GRANTING DEFENDANT'S
MOTION TO DISMISS FOR LACK OF
SUBJECT MATTER JURISDICTION;
DENYING PLAINTIFF'S MOTION FOR
EXPEDITED DISCOVERY AND
INSPECTION OF EVIDENCE**

[Re: ECF 18, 47]

Before the Court is the State of Israel's ("Defendant") motion to dismiss *pro se* plaintiff Eitan Eliahu's ("Plaintiff") complaint for, *inter alia*, lack of subject matter jurisdiction. Def.'s Mot., ECF 18. The Court received briefing from both sides and heard oral argument on Defendant's motion on January 22, 2015, after which it deemed the matter submitted. On January 26, 2015—four days after Defendant's Motion to Dismiss was submitted—Plaintiff filed a Motion for Expedited Discovery and Inspection of Evidence seeking to obtain jurisdictional discovery. Pl.'s Mot., ECF 47. Defendant opposes this latter motion. Def.'s Opp., ECF 51.

For the reasons stated herein, Defendant's Motion to Dismiss is GRANTED and Plaintiff's Motion for Expedited Discovery is DENIED.¹

I. BACKGROUND

A. Procedural History

On November 11, 2014, after Defendant filed its Motion to Dismiss, Plaintiff filed a "Cross Motion to Amend Complaint" seeking leave to add additional factual allegations and claims against Defendant. Pl.'s Mot. to Amend, ECF 33. Though Defendant opposed Plaintiff's

¹ The Court finds Plaintiff's motion appropriate for submission without oral argument and accordingly vacates the May 14, 2015 hearing date on that motion. Civ. L.R. 7-1(b).

1 request to amend, it alternatively suggested that the Court could apply Defendant's arguments for
2 dismissal to the amended pleading, which did not cure any of the defects identified in Defendant's
3 motion. Def.'s Opp. to Mot. to Amend, ECF 40. At the January 22, 2015 hearing, the Court
4 granted from the bench Plaintiff's motion for leave to amend and both parties accepted the Court's
5 decision to apply Defendant's jurisdictional arguments to Plaintiff's amended complaint. As such,
6 this order refers to Plaintiff's amended Complaint ("FAC") at ECF 33-1 as the operative pleading.

7 **B. Facts Alleged**

8 This lawsuit concerns a bitter divorce that spans two continents. Plaintiff and his ex-wife,
9 Sigalit Vardi Eliahу ("Vardi"), were married in Israel in 1993. *See* FAC ¶¶ 18, 44. In 1997, Vardi
10 filed a complaint in Israel seeking custody, child support, and asset distribution, as well as an
11 accounting from Plaintiff's mother, Janet, and sister, Iris. *See id.* ¶¶ 18-19, 46. That complaint
12 was closed shortly thereafter due to "reconciliation," and the couple immigrated to the United
13 States two months later. *Id.* ¶¶ 47-48.

14 In 2003, Vardi again sued for divorce, this time in the Superior Court for the County of
15 Santa Clara. *Id.* ¶ 50. The case proceeded to trial, and the Superior Court entered final judgment
16 in June 2007, finding as part of the division of marital property that "Plaintiff received
17 \$746,742.84 as gifts from his family during the marriage, which were used to purchase the family
18 residence" in California. *Id.* ¶¶ 53-54. The Superior Court rejected Vardi's contention that she
19 was owed a portion of that sum of money, finding no evidence to support her assertion that the
20 funds were community property. *Id.* ¶¶ 54-56.

21 In 2006, before the Superior Court tried the couples' divorce in California, Vardi reinstated
22 her 1997 divorce complaint in Israel against Plaintiff, Janet, and Iris. *Id.* ¶ 51. After the Superior
23 Court entered judgment, Vardi did not appeal the California court decision. Rather, she sought
24 leave to amend her complaint in the Israeli court into a claim for monetary relief, alleging that
25 Janet and Iris had been given funds from the marital property that was never returned. *Id.* ¶¶ 58-
26 60. Vardi sought in damages "exactly the sum which the California Court deducted from her
27 share of the California home, i.e. \$382,371.42." *Id.* ¶ 61.

28 Plaintiff and his mother and sister vigorously contested Vardi's claims in the Israeli court.

1 On December 3, 2007, the Israeli Family Court “dismissed the action as against Plaintiff, based on
2 res judicata in California” but maintained the claims against Janet and Iris because they had not
3 been parties to the divorce proceedings in California. *Id.* ¶ 62. The case progressed to an appeal
4 reviving Vardi’s claim against Plaintiff, consideration of a report prepared by a court-appointed
5 expert accountant, and Janet and Iris’s challenge on jurisdictional grounds. *Id.* ¶¶ 63-66. The
6 Israeli Family Court ultimately determined that Janet and Iris had consented to jurisdiction, that
7 Vardi’s claims against Plaintiff must be dismissed because of res judicata, and that Janet and Iris
8 were liable to Vardi in the amount of \$382,371.42 plus interest since 2006. *Id.* ¶¶ 66-68. Plaintiff,
9 Janet, and Iris appealed the decision to the Tel Aviv District Court, which appeal was denied.
10 Plaintiff alleges that the judge of that court “stated on the record ‘we are deliberating who will go
11 after Eitan, the mother or the ex wife,’” which allegedly demonstrates that the court “clearly
12 intended . . . that the property of Plaintiff in California will satisfy the judgment, either in favor of
13 appellants (Mother and Sister) or in favor of former Wife.” *Id.* ¶ 75. In November 2013, the
14 Israeli High Court of Justice denied leave to further appeal the decision of the Family Court. *Id.*

15 To satisfy the judgment, Vardi “docketed the Judgment with Israel Post Judgment Debt
16 Collection Authority.” *Id.* ¶ 76. The Debt Collection Authority “conducted proceedings to seize
17 the homes of Janet and Iris so as to pay Vardi.” *Id.* ¶ 20. In such proceedings, the Debt Collection
18 Authority sells the home through an appointed receiver and uses the proceeds to satisfy the
19 judgment owed. *Id.* ¶¶ 20, 30. In order to prevent his mother and sister’s home from being sold,
20 Plaintiff satisfied the judgment by selling his home in California and paying the Debt Collection
21 Authority in full in April 2014. *Id.* ¶¶ 25, 76. In September 2014, after the inception of this
22 lawsuit, Vardi returned to the Debt Collection Authority and secured an additional or amended
23 judgment. *See id.* ¶¶ 21, 130-33. The precise reason for and amount of this amended judgment is
24 not clear, as Plaintiff alternatively alleges that Vardi successfully obtained recalculation of
25 “currency exchanges at rates favorable to her so as to generate a sum of \$57,142,” *id.* ¶ 21, and
26 that she successfully applied to have the judgment entered with an earlier effective date so as to
27 collect an additional \$69,000, *id.* ¶ 131-32.

28 Plaintiff alleges that the Israeli courts that adjudicated the dispute between Vardi and

1 Plaintiff's family members acted in derogation of "international laws, and in particular,
2 international reciprocity and respect of res judicata and collateral estoppel." *Id.* ¶¶ 1, 78-88.
3 Although the "core of this complaint is Defendant's defiance of the international consensus that
4 final judgments must be accorded international res judicata effect," Plaintiff would also have this
5 Court understand that Defendant's alleged misconduct occurred in accord with its "ideology of
6 anti-male radical feminism" and its "unique stubbornness to separate itself from the rest of the
7 nations in the area of family law," whereby the rights of women are always favored over those of
8 men in the family courts. *Id.* ¶¶ 5, 89-104. Based on the foregoing, Plaintiff asserts claims against
9 Defendant for: expropriations by a foreign state; malicious prosecution; abuse of process;
10 trespasses to chattel; constructive trust; and declaratory and injunctive relief.

II. REQUESTS FOR JUDICIAL NOTICE

A. Defendant's Request for Judicial Notice

12 Defendant requests that the Court take notice of three documents: a translated copy of the
13 Israeli Supreme Court's final decision concerning the litigation in Israel (Exhibit A); translated
14 excerpts from the Israeli Family Court's judgment referenced in the FAC (Exhibit B); and an April
15 28, 2014 order of the Santa Clara County Superior Court regarding an "Order to Show Cause" that
16 Plaintiff filed in the divorce case between he and Vardi (Exhibit C). Def.'s Request for Judicial
17 Notice ("RJN"), ECF 21. Plaintiff opposes judicial notice of these documents on the ground that
18 they are not properly authenticated by declarants with personal knowledge. Plaintiff moreover
19 contends that Exhibits A and B do not present a complete picture of the Israeli proceedings, and
20 that Exhibit C is a court order that is presently on appeal and therefore not controlling in this case.
21 Pl.'s Opp. 23-25.

23 When considering a motion to dismiss for lack of subject matter jurisdiction (as the Court
24 is doing here), a court is not restricted to the face of the pleadings. *White v. Lee*, 227 F.3d 1214,
25 1242 (9th Cir. 2000). In fact, when the factual basis for a court's subject matter jurisdiction is
26 challenged, there are few procedural limitations, and the court may consider conflicting evidence,
27 affidavits, and documents, and even hold a limited evidentiary hearing. *St. Clair v. City of Chico*,
28 880 F.2d 199, 201 (9th Cir. 1989); *see also Thornhill Pub. Co. v. Gen. Tel. & Elecs. Corp.*, 594

1 F.2d 730, 733 (9th Cir. 1979). The Court need not go so far here, as Exhibits A and B are court
2 orders incorporated by reference into the operative pleading. *See* FAC ¶¶ 62-68, 75. Moreover,
3 all three exhibits are matters of public record that may be judicially noticed. *See Burbank-*
4 *Glendale-Pasadena Airport Auth. v. City of Burbank*, 136 F.3d 1360, 1364 (9th Cir. 1998). As
5 such, they may be considered even if the Court looks only at the face of the pleadings.

6 Plaintiff's objections are overruled because they go to the evidentiary weight that the Court
7 should accord to these documents, not whether they are judicially noticeable. The Court notes that
8 judicially noticeable documents will not be used "so as to supply, without formal introduction of
9 evidence, facts essential to support a contention" in the present case. *M/V Am. Queen v. San*
10 *Diego Marine Const. Corp.*, 708 F.2d 1483, 1491 (9th Cir. 1983). With that proviso, Defendant's
11 RJN is GRANTED in its entirety, and the documents will be considered to the extent they are
12 relevant to the Court's analysis.

13 B. Plaintiff's Request for Judicial Notice

14 After the January 22, 2015 hearing on Defendant's Motion to Dismiss, Plaintiff filed two
15 requests for judicial notice in support of his opposition to dismissal. *See* Pl.'s First RJN, ECF 49;
16 Pl.'s Second RJN, ECF 50. In the first RJN, Plaintiff asks that the Court take notice of the "Expert
17 Declaration of Tali Rosen, ESQ," an attorney member of the Israeli and New York state bars.
18 Pl.'s First RJN at 1. This request is DENIED, as the opinion of a legal expert is hardly an
19 adjudicative fact that is "not subject to reasonable dispute." Fed. R. Evid. 201. Plaintiff's second
20 RJN concerns a default judgment entered in an unrelated family court proceeding in New Jersey.
21 This judgment is a matter of public record and appropriate for judicial notice, though the Court
22 will not consider it "so as to supply, without formal introduction of evidence, facts essential to
23 support a contention" in the present case. *M/V Am. Queen*, 708 F.2d at 1491. As such, Plaintiff's
24 Second RJN is GRANTED, and the Court will consider the judicially noticeable document to the
25 extent it is relevant to the Court's analysis.

26 III. DISCUSSION

27 Defendant urges that the FAC should be dismissed because (1) Defendant is immune from
28 suit under the Foreign Sovereign Immunities Act ("FSIA"), 28 U.S.C. § 1330, *et seq.*; (2) Plaintiff

1 lacks standing to pursue his claims because his alleged injuries are self-inflicted; (3) Plaintiff fails
2 to state a claim; (4) this district is not the proper venue for Plaintiff's claims; and (5) foreign
3 policy abstention doctrines bar this suit. *See generally* Def.'s Mot. The Court need only address
4 Defendant's sovereign immunity and standing arguments, as they prove dispositive.

5 **A. Defendant is Immune from Suit Under the FSIA.**

6 Federal courts are courts of limited jurisdiction, possessing only that power authorized by
7 Article III of the United States Constitution and statutes enacted by Congress pursuant thereto.
8 *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377 (1994); *Bender v. Williamsport*
9 *Area Sch. Dist.*, 475 U.S. 534, 541 (1986). In the absence of subject matter jurisdiction, federal
10 courts have no power to consider claims and must dismiss the case. *See* Fed. R. Civ. P. 12(h)(3).

11 "The FSIA is the sole basis of subject matter jurisdiction over suits involving foreign states
12 and their agencies and instrumentalities." *Phaneuf v. Republic of Indonesia*, 106 F.3d 302, 304
13 (9th Cir. 1997); *see also Permanent Mission of India to the United Nations v. City of New York*,
14 551 U.S. 193, 197 (2007); 28 U.S.C. § 1603(a). "Under the FSIA, a foreign state is presumptively
15 immune from suit unless a specific exception applies." *Permanent Mission of India*, 551 U.S. at
16 197; *see also Cassirer v. Kingdom of Spain*, 616 F.3d 1019, 1022 (2010) (en banc). That
17 immunity is "not only immunity from liability, but immunity from suit." *Phaneuf*, 106 F.3d at
18 305. A court must accordingly address the merits of immunity (and subject matter jurisdiction)
19 under the FSIA early in the litigation "in order to preserve the immunity that may be determined to
20 exist." *In re Republic of Philippines*, 309 F.3d 1143, 1149 (9th Cir. 2002).

21 Because it is undisputed that Defendant—the State of Israel—is a foreign state within the
22 meaning of the FSIA, Plaintiff has the "burden of going forward with the evidence by offering
23 proof that one of the FSIA exemptions applies." *Siderman de Blake v. Republic of Argentina*, 965
24 F.2d 699, 708 n.9 (9th Cir. 1992) (citation and quotation omitted); *see also Phaneuf*, 106 F.3d at
25 307. Only once Plaintiff has presented such evidence does the burden shift to Defendant to prove
26 by a preponderance of the evidence that the exception to sovereign immunity does not apply.
27 *Siderman*, 965 F.2d at 708 n.9; *Joseph v. Office of Consulate Gen. of Nigeria*, 830 F.2d 1018,
28 1021 (9th Cir. 1987).

1 In the present case, Plaintiff invokes three of the narrowly circumscribed statutory
 2 exceptions to immunity under the FSIA: the “expropriation” exception in § 1605(a)(3), the
 3 “successor” exception in § 1605(a)(4), and the “noncommercial tort” exception in § 1605(a)(5).
 4 FAC ¶ 26. Defendant argues that Plaintiff has failed to demonstrate that any of these exceptions
 5 applies to Defendant’s alleged misconduct. Def.’s Mot. 6-11. The Court agrees.

6 **i. The expropriation exception does not apply.**

7 The expropriation—or, “international takings”—exception of the FSIA provides that a
 8 foreign state is not immune from suit in an action:

9 in which rights in property taken in violation of international law are
 10 in issue and [1] that property or any property exchanged for such
 property is present in the United States in connection with a
 11 commercial activity carried on in the United States by the foreign
 state; or [2] that property or any property exchanged for such
 12 property is owned or operated by an agency or instrumentality of the
 foreign state and that agency or instrumentality is engaged in a
 13 commercial activity in the United States.

14 28 U.S.C. § 1605(a)(3). A plaintiff asserting jurisdiction under this exception must establish (1)
 15 that the defendant effected a taking of the plaintiff’s property in violation of international law, and
 16 (2) either of the commercial activity nexuses set forth in the statute. *See Cassirer*, 616 F.3d at
 17 1027; *Siderman*, 965 F.2d at 711-13.² At the jurisdictional stage, the Court “need not decide
 18 whether the taking actually violated international law” so long as the claim is “substantial and
 19 non-frivolous.” *Siderman*, 965 F.2d at 711 (quoting *West v. Multibanco Comermex, S.A.*, 807
 20 F.2d 820, 826 (9th Cir. 1987)). As to the commercial activity nexus, however, the plaintiff bears
 21 an initial burden of production to demonstrate that the defendant engages in the requisite
 22 commercial activity in the United States before the burden shifts to the defendant to establish the
 23 absence of such facts. *See Agudas Chasidei Chabad of U.S. v. Russian Federation*, 528 F.3d 934,

25 ² Courts have further broken this test down into three or four elements, though the only difference
 26 is how one parses the statutory text. *See Agudas Chasidei Chabad of U.S. v. Russian Federation*,
 27 528 F.3d 934, 941-42 (D.C. Cir. 2008) (analyzing three elements of “rights in property,” “taken in
 violation of international law,” and “commercial activity”); *Zappia Middle E. Const. Co. v.
 Emirate of Abu Dhabi*, 215 F.3d 247, 251 (2d Cir. 2000) (“in order to establish jurisdiction
 28 pursuant to the FSIA expropriation exception, a plaintiff must show that: (1) rights in property are
 in issue; (2) that the property was “taken”; (3) that the taking was in violation of international law;
 and (4) that one of the two nexus requirements is satisfied”).

1 940-41 (D.C. Cir. 2008) (“The alternative ‘commercial activity’ requirements are purely factual
2 predicates independent of the plaintiff’s claim, and must . . . be resolved in the plaintiff’s favor
3 before the suit can proceed.”).

4 Plaintiff fails to allege a substantial or non-frivolous claim that Defendant has taken
5 Plaintiff’s property in violation of the international law of expropriation. The term “taken” in §
6 1605(a)(3) “refers to acts of a sovereign, not a private enterprise, that deprive a *plaintiff* of
7 property without adequate compensation.” *Zappia Middle E. Const. Co. v. Emirate of Abu Dhabi*,
8 215 F.3d 247, 251 (2d Cir. 2000) (emphasis added) (examining legislative history of the FSIA).
9 “[A] taking offends international law when it does not serve a public purpose, when it
10 discriminates against those who are not nationals of the country, or when it is not accomplished
11 with payment of just compensation.” *Cassirer*, 616 F.3d at 1027. Although Plaintiff attempts to
12 conform his allegations these principles, *see* FAC ¶¶ 116-19, he fails to allege that Defendant took
13 *his* property. Rather, Plaintiff alleges that Defendant “took” his property “by holding hostage the
14 properties of Mother and Sister,” which was allegedly “intended to work like domino cards” to
15 effect a taking of Plaintiff’s property. *Id.* ¶¶ 116, 119. Yet Plaintiff acknowledges that the Israeli
16 court dismissed the lawsuit against him and that he voluntarily sold his home in California to
17 satisfy the judgment against Janet and Iris in Israel.³ *See* FAC ¶¶ 25, 30, 62, 67. In the face of the
18 fact that the Israeli court never entered a judgment against him, Plaintiff accords undue
19 significance to the statement of a Tel Aviv District Court judge suggesting that either Vardi or
20 Plaintiff’s mother might “go after” Plaintiff following the Israeli judgment, arguing that this
21 demonstrates Defendant’s *intent* to take *his* property. *See* FAC ¶ 75; Pl.’s Opp. 7, 25. This
22 statement, however, in no way suggests that *the State of Israel* (as opposed to Vardi) claimed
23 ownership over Plaintiff’s property. *See Cassirer*, 616 F.3d at 1031. In short, there are simply no
24 facts alleged that would warrant a finding that the offhand remark by a judicial officer in
25 adjudicating a dispute between private parties amounted to a sovereign state’s taking of a third
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27 _____
28 ³ While the Court understands that Plaintiff may disagree with the characterization of his actions
as “voluntary,” it is undisputed that the Israeli courts did not order Plaintiff to take any action with
respect to the judgment against Janet and Iris.

1 party's property in violation of the law of expropriation.⁴

2 Nor has Plaintiff made out a substantial or non-frivolous claim that the rulings of the
 3 Israeli courts violated some other international law or custom. The gravamen of Plaintiff's
 4 complaint is that the Israeli court did not respect res judicata. *See* FAC ¶ 89 ("Plaintiff alleges that
 5 the core of this complaint is Defendant's defiance of the international consensus that final
 6 judgments must be accorded international res judicata effect as between countries that respect each
 7 other and judicially cooperate with each other."); *see generally id.* ¶¶ 78-88, 111-120. It is not
 8 clear that a failure to abide by res judicata is a taking in violation of international law, and Plaintiff
 9 offers no authority in support of this contention.⁵ Courts in the United States have acknowledged
 10 that the application of res judicata to foreign judgments is not so much a matter of international
 11 law or customary international norms as a matter of comity. *See In re Arbitration Between Int'l*
 12 *Bechtel Co., Ltd. & Dep't of Civil Aviation of Gov't of Dubai*, 300 F. Supp. 2d 112, 118 (D.D.C.
 13 2004); *see also Hilton v. Guyot*, 159 U.S. 113 (1895). Thus, this case cannot be compared to those
 14 such as *Abelesz v. Magyar Nemzeti Bank*, 692 F.3d 661 (7th Cir. 2012), wherein the court
 15 determined that the taking of property to effectuate genocide was a "taking" in violation of
 16 universally recognized customary international law that satisfied the first condition of the FSIA
 17 takings exception. *Id.* at 675-77. Furthermore, Plaintiff alleges that the Israeli Family Court's
 18 decision with respect to Janet and Iris is contrary to Plaintiff's *interpretation* of the res judicata
 19 effect of the Santa Clara Superior Court's divorce decree, not that the Family Court failed to
 20 consider res judicata at all. *See* FAC ¶¶ 84-86. Boiled down to its essence, Plaintiff disagrees
 21 with how the Israeli Family Court applied res judicata in the case against Janet and Iris. Plaintiff's
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23 ⁴ To the extent Plaintiff contends that Defendant's alleged "ideology of anti-male radical
 24 feminism" is the cause of a discriminatory taking, Plaintiff misunderstands the case law defining
 25 takings in violation of international law. "[A] taking offends international law . . . when it
 26 discriminates against those who are not nationals of the country," *Cassirer*, 616 F.3d at 1027
 27 (emphasis added), not when a sovereign discriminates among groups of its own subjects. Plaintiff
 28 does not allege that Defendant took his property because he is not a national of the State of Israel.

25 ⁵ The contours and viability of the theory of so-called "judicial takings"—where a court decision
 26 may be deemed to have effectively taken property rights from an individual—are unclear even in
 27 the courts of this country. *See generally Stop the Beach Renourishment, Inc. v. Florida Dep't of*
Env'l. Prot., 560 U.S. 702, 702 (2010).

1 disagreement—rightly or wrongly—with the determination of a foreign court is insufficient basis
2 to sustain a lawsuit against a foreign sovereign in the courts of this country.

3 As to the commercial activity nexus, Plaintiff's allegations and evidence also fall short.
4 Plaintiff argues that there is “ample nexus” with the United States and that both clauses of the
5 commercial activity requirement are satisfied in this case. *See* Pl.'s Opp. 13-14. However, he
6 alleges no facts establishing either that the expropriated property (or property exchanged for the
7 expropriated property) is in the United States *in connection with* Defendant's commercial activity
8 in this country. Plaintiff argues that “the separate equity of plaintiff in the marital home stood as a
9 trophy which Vardi was after” in the Israeli court proceedings, presumably suggesting that the first
10 clause of the commercial activity requirement is satisfied because Plaintiff believed his home in
11 California was at issue. *Id.* at 13. Even accepting this as true, Plaintiff does not allege any
12 connection between the property in California and Defendant's commercial activity in the United
13 States. Nor is the second clause of the nexus requirement satisfied, despite Plaintiff's argument
14 that “[d]uring the pendency of this action, the liquidated proceeds of the house were sent to the
15 Debt Collection Authority, which is when the second hook kicked in. There is compelling
16 evidence to argue that the property is owned or operated by a defendant who is engaged in a
17 commercial activity in the United States (See relevant pleadings in the complaint).” Pl.'s Opp. 14.
18 The Court has combed through both the FAC and the original complaint and has found no
19 allegations concerning the Debt Collection Authority's supposed commercial activity in the
20 United States. In any event, to the extent the Debt Collection Authority is an “agency or
21 instrumentality” of the State of Israel, Plaintiff has not sued the Debt Collection Authority in this
22 action. The only defendant here is the State of Israel, and Plaintiff has failed to allege—much less
23 satisfy his burden of production to demonstrate—either of the commercial activity nexuses
24 required for this Court to have subject matter jurisdiction over the claims against Defendant in this
25 action.

26 In sum, Plaintiff's assertion that Defendant took his property in violation of international
27 law when its courts adjudicated rights in a private dispute borders on frivolous. Moreover,
28 Plaintiff has failed to demonstrate any nexus between the allegedly expropriated property and

1 Defendant's commercial activity in the United States. As such, the Court finds that the
2 expropriation exception of the FSIA does not apply in this case.

3 **ii. The successor exception does not apply.**

4 The successor exception (or, to use Defendant's terminology, "rights-in-property
5 exception") set forth in § 1605(a)(4) of the FSIA provides that a foreign sovereign is not immune
6 if "rights in property in the United States acquired by succession or gift or rights in immovable
7 property situated in the United States are in issue." 28 U.S.C. § 1605(a)(4). This exception is
8 limited to circumstances where the foreign state is "party by virtue of its succession to [or is gifted
9 with] a private party's claim or putative liability" and focuses on "whether the *foreign state* has
10 acquired by succession [or gift], not whether any party to the action has acquired a right by
11 succession [or gift]." *Republic of Philippines*, 309 F.3d at 1151 (emphasis added).

12 It is clear that the "successor" exception to the FSIA does not apply in this case, as
13 Plaintiff's claims do not concern property that was gifted to the State of Israel. *See* Def.'s Mot. 9-
14 10. The Court furthermore agrees with Defendant that Plaintiff's argument on this point is non-
15 responsive, as he appears to be arguing the "rights in property" element of the expropriation
16 exception. *See* Def.'s Reply 4; Pl.'s Opp. 15-16; *id.* at 16 ("Thus, with the expropriation of
17 plaintiff's separate property, the requirement of 'rights in property' is amply satisfied."). The
18 Court therefore finds that the "successor" exception at § 1605(a)(4) does not apply.

19 **iii. The noncommercial tort exception does not apply.**

20 The noncommercial tort exception to the FSIA permits actions:

21 in which money damages are sought against a foreign state for
22 personal injury or death, or damage to or loss of property, occurring
23 in the United States and caused by the tortious act or omission of
24 that foreign state or of any official or employee of that foreign state
25 while acting within the scope of his office or employment; except
26 this paragraph shall not apply to—

27 (A) any claim based upon the exercise or performance or the failure
28 to exercise or perform a discretionary function regardless of whether
the discretion be abused, or

(B) any claim arising out of malicious prosecution, abuse of process,
libel, slander, misrepresentation, deceit, or interference with contract
rights; or

1 28 U.S.C. § 1605(a)(5). Defendant argues that this exception does not apply because Plaintiff has
2 not alleged a tort committed by Defendant in the United States. *See* Def.'s Mot. 10-11. Plaintiff
3 offers no rejoinder to these arguments, acknowledging that he "relied on the expropriation
4 exception mostly." Pl.'s Opp. 18.

5 Plaintiff does appear to suggest that the addition of tort claims in the FAC addresses some
6 of the deficiencies Defendant identified in its moving papers. *See id.* ("Plaintiff has asserted in his
7 proposed amended complaint causes of action in negligence, malicious prosecution and abuse of
8 process."). Defendant adroitly notes in reply that Plaintiff's FAC does not in fact contain a claim
9 for negligence and that § 1605(a)(5) expressly does *not* apply to claims for malicious prosecution
10 and abuse of process. Def.'s Reply 4-5; *see* 28 U.S.C. § 1605(B). Moreover, the FAC and
11 Plaintiff's briefing are silent on the charge that the noncommercial tort exception "covers only
12 torts occurring within the territorial jurisdiction of the United States." *Argentine Republic v.*
13 *Amerada Hess Shipping Corp.*, 488 U.S. 428, 441 (1989). There are no facts to even suggest that
14 Defendant's allegedly tortious acts were committed in the United States. As such, the Court finds
15 that the noncommercial tort exception to the FSIA does not apply to the claims in this action.

16 **iv. Defendant has not impliedly waived its sovereign immunity.**

17 Plaintiff further argues in opposition to dismissal that Defendant implicitly waived its
18 sovereign immunity, and that the waiver exception to the FSIA therefore applies to confer
19 jurisdiction over his case. Pl.'s Opp. 17; 28 U.S.C. § 1605(a)(1). The waiver exception "is
20 narrowly construed," and implied waiver is typically only found in three narrowly circumscribed
21 instances, none of which is applicable here. *See Siderman*, 965 F.2d at 720-21 (legislative history
22 indicates that courts have found implied waivers where (1) "a foreign state has agreed to
23 arbitration in another country"; (2) "a foreign state has agreed that the law of a particular country
24 should govern a contract"; and (3) "a foreign state has filed a responsive pleading in an action
25 without raising the defense of sovereign immunity").

26 Plaintiff's waiver theory is not alleged in the FAC and is difficult to follow. He appears to
27 be arguing that the waiver occurred when the Israeli courts "knowingly transgress[ed] on the acts
28 of the Judiciary of a USA court" by rendering judgment in the Israeli suit between Vardi and

1 Plaintiff's mother and sister. *See* Pl.'s Opp. 17. Plaintiff's theory hangs on a remark made by a
2 judge of the Tel Aviv District Court who, on appeal of the final judgment of the Family Court,
3 "stated on the record 'we are deliberating who will go after Eitan, the mother or the ex wife.'" FAC ¶ 75; Pl.'s Opp. 17. By anticipating that the judgment in Israel could result in either Vardi or
4 Plaintiff's family suing Plaintiff in California, the Israeli court—and, by extension, the State of
5 Israel—somehow "availed" itself of the American court system and made itself amenable to suit in
6 the United States. *Id.* at 17-18. There is no support for the assertion that a foreign court
7 anticipating that its ruling could lead to further litigation in the United States somehow waives its
8 sovereign immunity and makes itself amenable to be sued in the United States in a suit that
9 effectively amounts to an extraterritorial appeal of that foreign court's ruling.

10 To the extent Plaintiff bases his theory on the "similar but not same case" of *Siderman*,
11 Pl.'s Opp. 18, that case is easily distinguishable. The *Siderman* court found evidence indicating
12 that "Argentina apparently not only envisioned United States court participation in its persecution
13 of the [plaintiffs], but by its actions deliberately implicated our courts in that persecution,"
14 including enlisting the aid of American courts to serve the plaintiffs with process. *Siderman*, 965
15 F.2d at 721-22. Suffice it to say, Plaintiff's interpretation of a remark made during appellate
16 argument in the Israeli case is insufficient evidence on which to base a finding that Defendant
17 implicitly waived its sovereign immunity in this action. The Court therefore finds that the waiver
18 exception at § 1605(a)(1) of the FSIA does not apply.

19 Plaintiff has failed to demonstrate that any exception to the FSIA applies in this case.
20 Defendant is therefore immune from suit. 28 U.S.C. § 1604. The Court accordingly finds that it
21 lacks subject matter jurisdiction to adjudicate this dispute and GRANTS Defendant's Motion to
22 Dismiss on that ground.

23 **B. Plaintiff Lacks Standing to Pursue His Claims Against Defendant.**

24 Although it is clear that the FSIA immunizes the Defendant in this lawsuit, the Court
25 separately concludes that Plaintiff also lacks standing to pursue his claims against Defendant. *See*
26 Def.'s Mot. 12-13. To establish Article III standing, a plaintiff must establish injury, causation,
27 and redressability. *Clapper v. Amnesty Int'l USA*, --- U.S. ---, 133 S. Ct. 1138, 1147 (2013). The
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1 plaintiff's injury must be *caused* by the defendant, "which for Article III purposes requires a
2 showing that his injury is 'fairly traceable to the challenged action of the defendant, and not the
3 result of the independent action of some third party not before the court.'" *Mendia v. Garcia*, 768
4 F.3d 1009, 1012 (9th Cir. 2014) (quoting *Bennett v. Spear*, 520 U.S. 154, 167 (1997)). A plaintiff
5 cannot sustain Article III standing based on injuries that are self-inflicted. *See id.* at 1013 n.1;
6 *Natural Res. Def. Council, Inc. v. U.S. Food & Drug Admin.*, 710 F.3d 71, 85 (2d Cir. 2013), *as
amended* (Mar. 21, 2013).

7 Though Plaintiff believes his grievance is with Defendant, he alleges no injuries fairly
8 traceable to Defendant's adjudication of a private dispute between Vardi and Plaintiff's mother
9 and sister. In fact, Plaintiff acknowledges that the Israeli court never entered judgment against
10 him or ordered him to satisfy any judgment against his family members. Plaintiff chose to satisfy
11 the judgment against his mother and sister by selling his property in the United States. Plaintiff
12 maintains, however, that the judgment against Janet and Iris was a veiled attempt to take *his*
13 property "'through the back door', by catching his mother and sister as responsible for 'what he
14 did to Vardi.'" *See* Pl.'s Opp. 21. This is not a reasonable inference from the facts alleged. To
15 the extent Plaintiff suffered injury from having to travel to and defend himself in an Israeli court,
16 such injuries are more directly traceable to the actions of his ex-wife than to the Israeli court that
17 adjudicated the dispute between Plaintiff's family and his ex-wife. Moreover, because the facts
18 alleged in the FAC clearly indicate a lack of standing, the Court rejects Plaintiff's argument that
19 the question of whether his injury was self-inflicted is a factual one. *Id.* As the party invoking
20 this Court's jurisdiction, it is Plaintiff's burden to demonstrate Article III standing, *Sierra Club v.
U.S. E.P.A.*, 762 F.3d 971, 976 (9th Cir. 2014), and his own allegations fail to do so here.

21 Based on the foregoing, Defendant's Motion to Dismiss is likewise GRANTED because
22 Plaintiff lacks Article III standing to pursue his claims.

23 **IV. PLAINTIFF'S MOTION FOR EXPEDITED DISCOVERY**

24 On January 26, 2015, after the Court took Defendant's Motion to Dismiss under
25 submission, Plaintiff filed a Motion for Expedited Discovery requesting discovery into
26 jurisdictional facts. Pl.'s Mot. 1-2. Plaintiff contends that Defendant's argument that Plaintiff
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1 voluntarily paid to satisfy the Israeli judgment against Plaintiff's mother and sister is a "false
2 declaration" that "must be verified through a discovery as Defendant bases its immunity claim on
3 this false declaration." *Id.* at 1. Plaintiff argues that discovery "must be warranted in order for
4 Plaintiff to establish that the cause of action falls in the statutory exceptions of Expropriation and
5 Waiver of the Defendant's claimed immunity" and that it is "also necessary so Plaintiff would be
6 able to prove the violation of an international law in regards to res judicata and collateral
7 estoppel." *Id.* Defendant opposes this request on the grounds that Plaintiff fails to identify any
8 specific discovery that he needs to establish jurisdiction under the FSIA and that any discovery is
9 unwarranted given Plaintiff's deficient pleadings. Def.'s Opp. 1-3, ECF 51. The Court agrees
10 with Defendant.

11 Although "generally a plaintiff may be allowed limited discovery with respect to the
12 jurisdictional issue [under the FSIA]," the right to preliminary discovery is not absolute, and
13 courts have recognized the need to treat such requests with circumspection, given the nature of the
14 immunity invoked. *Filus v. Lot Polish Airlines*, 907 F.2d 1328, 1332 (2d Cir. 1990); *see also First*
15 *City, Texas-Houston, N.A. v. Rafidain Bank*, 150 F.3d 172, 177 (2d Cir. 1998). Jurisdictional
16 discovery under the FSIA must therefore balance a sovereign's legitimate claim to immunity
17 against the need for discovery into specific exceptions to immunity, where the facts underlying the
18 exceptions are controverted. *See Alperin v. Vatican Bank*, No. C 99-04941 MMC(EDL), 2006
19 WL 1663847, at *1 (N.D. Cal. June 15, 2006); *see also Siderman*, 965 F.2d at 712-13 ("parties
20 should be allowed to conduct discovery for the limited purpose of establishing jurisdictional facts"
21 if there are any jurisdictional facts in dispute).

22 As an initial matter, Plaintiff's request for discovery here is untimely. Despite the
23 deficiencies identified in Defendant's Motion to Dismiss, Plaintiff waited until after oral argument
24 on Defendant's motion to seek discovery in an attempt to rescue his case. Given his *pro se* status,
25 this fact alone is not enough to warrant summary denial of Plaintiff's request. However, Plaintiff
26 also makes no showing that jurisdictional discovery is warranted in this case. As discussed above,
27 Plaintiff has not satisfied his initial burden of even alleging applicable exceptions to the FSIA. To
28 the extent Plaintiff hangs his jurisdictional hat on the expropriation and waiver exceptions to the

1 FSIA, his pleadings, even when taken as true, fail to demonstrate that those exceptions apply.
2 Plaintiff's allegation that Defendant's conduct effected a taking in violation of international
3 borders on frivolous, and his assertion that the State of Israel waived its sovereign immunity is
4 equally implausible. Moreover, in the guise of jurisdictional discovery, Plaintiff seeks to obtain
5 evidence to prove his case, Pl.'s Mot. 1, which is further reason to reject Plaintiff's request.
6 Plaintiff's Motion for Expedited Discovery is therefore DENIED.

7 Plaintiff's motion also includes a request for leave to amend his complaint in order to
8 assert additional claims against Defendant. *See* Pl.'s Mot. 4. This request is procedurally
9 improper because Plaintiff makes no showing under Federal Rule of Civil Procedure 15 for the
10 propriety of the proposed amendments, nor does he set forth the requested amendments in a
11 proposed amended pleading, as required by Civil Local Rule 10-1. More fundamentally, the Court
12 has determined that none of the FSIA exceptions apply to confer subject matter jurisdiction over
13 this suit. Plaintiff's proposed new claims do not cure this jurisdictional defect and permitting
14 further amendment would therefore be an exercise in futility. Plaintiff's request for leave to
15 amend is accordingly DENIED.

16 **V. ORDER**

17 For the foregoing reasons, IT IS HEREBY ORDERED that Defendant's Motion to
18 Dismiss is GRANTED for lack of subject matter jurisdiction under the FSIA and lack of Article
19 III standing. Plaintiff's Motion for Expedited Discovery is DENIED. The Clerk of the Court shall
20 close the case file.

21 **IT IS SO ORDERED.**

22 Dated: March 3, 2015

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24 BETH LABSON FREEMAN
United States District Judge

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